

Remarks / Discussion of Issues

In the non-final Office Action dated April 16, 2009, it is noted that claims 1-24 are pending and claims 1-24 stand rejected. Claims 1, 23, and 24 are independent claims and claims 2-22 depend ultimately from claim 1.

Rejections under 35 U.S.C. §103

In the Office Action, claims 1-24 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over US Patent Publication No.: 2005/0018638, Lindskog et al., (hereinafter Lindskog) in view of US Patent Publication No.: 2003/0133427, Cimini et al., (hereinafter Cimini). The Applicant respectfully traverses this rejection.

In re Wada and Murphy, Appeal 2007-3733, the BPAI stated that:

"When determining whether a claim is obvious, an examiner must make "a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, "obviousness requires a suggestion of all limitations in a claim." *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (*citing In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, "*there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*" *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added))."

It is respectfully submitted that the Office action has not established a *prima facie* case of obviousness, because as discussed below, a suggestion of all limitations in the claims is lacking in the combination of Lindskog and Cimini.

Applicant's Claim 1 is a method for providing bandwidth fairness in wireless networks, which recites, in relevant part, "defining a ratio between

a plurality of streams based on the bandwidth requirement.” Emphasis added.

The Office action at page 3 admits that Lindskog does not disclose the feature of defining a ratio between a plurality of streams based on bandwidth requirement and relies on Cimini as disclosing this feature. The Office action alleges that Cimini, in paragraphs [0051]-[0061] discloses shaping the traffic in order to provide the proper ratios for transmission, wherein the MAC Service Data Unit (MSDU) size is based on the desired throughput. Applicant respectfully disagrees and submits that the method for shaping data traffic transmission as apparently disclosed by Cimini is not the same or equivalent to the feature of “defining a ratio between a plurality of streams based on bandwidth requirement,” as in Applicant’s claim 1.

Cimini apparently discloses a method for shaping data packet transmission by nodes in a wireless network. (Abstract). Cimini, at paragraph [0047], appears to disclose that the packet shaper sets a maximum limit for an MSDU based on the data rate so that maximum transmission times of all nodes are the same to ensure that network resources are equally distributed among all the nodes. Table 1 of Cimini seems to disclose a ratio between the physical data rate and the maximum MSDU for packet shaping so that the maximum transmission time of different data rates are approximately the same. Table 2 appears to disclose an MSDU size limit range with the addition of the minimum MSDU size limit. In other words, for example, a physical data rate of 54 Mbps apparently results in an MSDU size limit ranging between 2400 and 2096 Bytes, whereas a physical data rate of 6 Mbps results in an MSDU size limit ranging between 350 and 450 Bytes.

At paragraph [0048], Cimini appears to disclose the packet shaper adapting the MSDU size limit based on not only the physical data rate, but also on the network activity. Apparently, a controller monitors the network

activity and a predictor adjusts the MSDU limit based on transmission time statistics to ensure a minimum rate guarantee.

However, in contrast to Applicant's claim 1, Cimini does not define a ratio between a plurality of streams based on the bandwidth requirement. Although Cimini may disclose a ratio between physical data rates and MSDU size limits and also adapting the MSDU size limit based on the network activity, nowhere does Cimini disclose, teach, or even suggest defining a ratio between data streams, based on bandwidth requirement. The packet shaping methodologies as disclosed by Cimini may guarantee a minimum rate and also provide different data rates by adjusting the MSDU size limit based on the desired throughput, however, this is not the same as defining a ratio between data streams. Thus, Applicant respectfully submits that Cimini does not disclose or even suggest all limitations in claim 1.

As noted above, the Office action admits that Lindskog does not disclose the feature of defining a ratio between a plurality of streams based on bandwidth requirement. As such, neither Cimini or Lindskog, separately or in combination, discloses, teaches or suggests the feature of "defining a ratio between a plurality of streams based on the bandwidth requirement," as recited in Applicant's claim 1. Because Lindskog and Cimini, separately or in combination, do not disclose or even suggest all limitations in the claim, Applicant respectfully submits that the Office has not presented a prima facie case of obviousness and as such, respectfully requests the withdrawal of the rejection to independent claim 1 under 35 U.S.C. 103(a).

Dependent claims 2-22 ultimately depend from claim 1 and incorporate by reference all of the features of the allowable parent claim 1. Furthermore, claims 2-22 include additional distinguishing features. For claims 2-22 Applicant essentially repeats the above arguments from claim 1 and applies them to dependent claims 2-22, respectively. As such, Applicant respectfully submits that dependent claims 2-22 are allowable at least by

virtue of their dependency on allowable base claim 1 and respectfully requests the withdrawal of the rejection to claims 2-22 under 35 U.S.C. 103(a).

Independent claims 23 and 24, although different from claim 1, include several similar distinguishing features as discussed above with respect to claim 1. For example, claim 23 is directed to an access point for providing bandwidth fairness in wireless networks, and claim 24 is directed to a program product stored on a recordable medium, while claim 1 is directed to a method.

The Office action uses substantially the same arguments as set forth with regard to claim 1, alleging that independent claims 23 and 24 are unpatentable over the combination of Lindskog and Cimini. Applicant essentially repeats the above arguments for claim 1 and applies them to independent claims 23 and 24. As such, Applicant respectfully submits that the Office has not presented a prima facie case of obviousness and respectfully requests the withdrawal of the rejection of independent claims 23 and 24 under 35 U.S.C. 103(a).

Conclusion

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance.

If there are any errors with respect to the fees for this response or any other papers related to this response, the Director is hereby given permission to charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account No. 14-1270.

Respectfully submitted,

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